TELLS THE FACTS AND NAMES THE NAMES

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What can we do about the High Court's Marriage to Corporate Power?

The History, the Verdict and Now the Challenge

By Mason Gaffney

On January 21, 2010, our High Court shocked Americans by ruling in *Citizens United v. Federal Elections Commission* that a corporation may contribute unlimited funds advertising its views for and against political candidates of its choice – in practice, the choice of its CEO or directors. The ideas behind this are that a corporation is a "legal person," with all the rights (if not all the duties) of a human being; that, as such, it has a right of free speech; and that donating money is a form of speech. Already K&L Gates, a top Washington lobbying firm, is advising its clients how to funnel money through lobbying groups, or "trade associations." This culminates a long series of actions and reactions (decisions, legislative acts, and electoral results) that bit by bit have raised the power of corporations in American economic and public life.

Roman law knew no such thing as corporate personhood. It grew in Europe after the 12th century, used by bodies both civil (cities and guilds) and ecclesiastical, including universities. "The church" was a huge set of interlocking corporate bodies. Being immortal, corporations would progressively agglomerate land and power, leading to restrictions like the English Statutes of Mortmain (1279 and 1290) and direct attacks, with confiscations such as those by Henry VIII. So, when America rebelled in 1776, Europe had had long experience with corporations and relevant law.

England, when it was our "mother

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On the Front Lines of the World Class Struggle

The Cargo Chain

By JoAnn Wypijewski

It seems the simplest of things, the global circulation of commodities. Simple in that the stamp on the box or the label inside the T-shirt saying "Made in China" or "Made in India" – or Made Anywhere besides the farm down the road or the artisanal jewelry shop up the street – implies a relay system of transport that is easily understood without having to think much about it. The Wal-Mart truck barreling down the highway in the next lane; the Maersk containers flickering past cars stopped at railroad crossings; the cranes visible from freeways that skirt the edges of the great ports of coastal cities: all are part of the moving landscape of our lives. We may not be able to envision or care to consider the factory floors or clean rooms or machine shops of the world where things are made, or the workers in hovels or bunkhouses or buzzing cities who make those things. But at one time or another, we all encounter the truck driver or the UPS man who delivers them, and who represents the end of a chain leading back to the docks and the ships, without which nothing can move efficiently.

But there simplicity ends. "The people who move the world can also stop it," radical dockworkers like to say, and that captures the essential fragility of a global production and distribution system that depends on the precise coordination of hundreds of thousands of moving parts. If some of those moving parts – workers at a major trucking hub, a major rail switching network, or, especially, a strategic string of ports – refuse to do their part, the whole system gets jammed up. Refuse long enough and broadly enough, and the system would be in crisis.

Yet, precisely because those moving parts are so numerous, with all shades of leadership or leaderlessness, personality and political inclination, the workers' job of identifying them, organizing them and coordinating disciplined collective action is so difficult. Meanwhile, capital does what's in its nature to do: repress workers with brutality, replace them with machines.

I have before me a handsomely designed document, called "The Cargo Chain: Workers Who Make Our Economy Move." Basically, it is a map of the main container ports, primary and secondary highways, primary and secondary rail lines, and major highway-to-rail transfer stations in North America. It was produced by the Center for Urban Pedagogy, in collaboration with *Labor Notes* and the Longshore Workers Coalition, a rank-and-file reform movement within the International Longshore Association (ILA). Tony Perlstein, co-chair of the Workers Coalition, passed it out at the start of March in Charleston, South Carolina, at a general assembly of the International Dockworkers Council (IDC), an association of many of the most militant dockers' unions in the world. Tony is also secretary-treasurer of ILA Local 1588 out of Bayonne, New Jersey – part of a group of East Coast and Gulf Coast locals that are trying to scratch and strategize their way toward democratic, solidarity unionism in an institution, the ILA, better known for cutting deals with employers and hanging workers out to dry when it isn't actively attacking them. It would be useful, Tony told his international brothers and sisters, to have similar maps of the logistic networks for every part of the globe.

The IDC delegates, representing dock-

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ers in twenty countries and close to 220 ports, see themselves at the critical post in the war between the workers of the world and capital. And none doubts that it is a war. Numbers tend to drain even the bloodiest conflicts of dramatic force, but a few are in order here. Nearly 212 million of the world's workers were unemployed last year. In 2008, about 633 million workers and their families were living on less than $1.25 a day. The International Labor Organization calls this poverty and reports that 215 million more were "at risk of falling into" it in 2009. But "poverty" is too antiseptic a name for the condition of want and the terror it describes, and "falling in" evokes the chanciness of an accident, as if there were no potent dynamic between immiseration and enrichment. It doesn't just happen that 225 individuals are worth more than the combined wealth of 2.5 billion others: there is a thieving force active in the world.

Dockworkers, still among the best organized and best paid members of the working class, have not been spared the knife edge of that thievery. Until the end of 2008, container traffic in ports had been growing by about 10 per cent a year, but that growth was accompanied by intensified efforts to rewrite work rules on the docks, casualize the labor force, weaken or break unions, expand in anti-union settings, and otherwise set the conditions for an increasingly "flexible" environment – one, where dockers could be overworked or made redundant, as it pleased the employers.

The economic crisis has both added problems in the ports and provided cover for giant shipping companies, terminal operators and their state allies to amp up long-standing conflicts. About 90 per cent of all the goods transported around the world, other than bulk goods like grain and iron ore, are shipped in containers. What makes workers who deal with those containers so potentially powerful also makes them immediately vulnerable in a downturn. The recent crash in demand meant fewer shipping orders, hence fewer ships, fewer containers, fewer jobs on the docks, and so on. Ships are abruptly laid up. At one point, 1,000 of them simply dropped anchor in the harbor outside Singapore. Hundreds more bobbed in the Bosporus. About 550 are still laid up. Others navigate the sea lanes half empty.

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In most ports, container traffic dropped 20 per cent. According to Bob McEllrath, president of the International Longshore and Warehouse Union, representing port workers on the West Coast, traffic was down 35 to 40 per cent in Los Angeles last year and has recovered only about 10 per cent now. In Charleston, ILA Local 1422 president Ken Riley says work hours are down 37 per cent. Senior guys who were working six or seven days a week are down to five or six; midlevel workers are down to two or three; and those on the low end, who'd been making only two or three days' pay in high times, aren't making any at all.

In Germany, 1,500 dockers were sacked outright; in Antwerp, 2,000 were thrown on the unemployed line in a single day. The latter continue to collect 66 per cent of their basic wage but also wonder, how long will that be possible? The employers have been long tired of the social security fund that provides that safety net. In Senegal, ships are coming to port with almost nothing, so workers on whose wage packets whole communities often depend get almost nothing. In China, mountains of iron ore stand useless, so bulk freight work is down. In port after port, "we could build football fields on our container yards," says Frank Leys, who started his career on the docks of Antwerp in 1974 and is now secretary of the dockers section of the International Transport Workers' Federation (ITF). Only India has been relatively unscathed, Leys says. And there, in Mumbai over the past two years, unionized port drivers have been beaten with hockey sticks, steel rods and knuckle dusters, plucked from company housing and threatened with eviction by thugs of a Maersk subcontractor, aiming to intimidate them into renouncing their union and joining a company front, what internationalists call a yellow union.

Around the long tables in the elegant meeting hall of the Francis Marion Hotel in Charleston, the IDC delegates testified to the wildly uneven conditions separating dockworkers (not to mention those separating dockers from other workers in the same country or region) and also to the single-minded purpose of the employers. Only five companies really control the economy of ocean shipping and seaports: Maersk, the world's largest shipper, based in Copenhagen; its subsidiary APM Terminals based in The Hague; Hutchison Whampoa, the world's largest port operator, based in Hong Kong; Port of Singapore Authorities, or PSA, essentially a state entity of Singapore; and Dubai Ports World, based in the Jebel Ali Free Zone of the UAE, a tax-free, regulation-free, 100 per cent profit repatriation haven of foreign-owned trading, warehouse, logistics and manufacturing concerns, and the most frequent foreign port stop for the U.S. Navy. Together with SSA Marine, the largest U.S. container terminal operator based in Seattle, these companies control more than 50 per cent of the industry.

In the economic crisis, ship owners' and terminal operators' costs have spiked as cargo volumes have declined, offering a ripe opportunity for employers to push "efficiencies" that were a priority all along. Where collaboration doesn't work,

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there is always force. While the IDC meeting was in progress, news arrived that corporate and government agents in Costa Rica had just committed a coup against the dockworkers' union there, replacing its leadership, which had been resisting efforts to privatize the ports, with their own stooges.

Earlier in the proceedings, José Edgardo Contreras from the SGTM in Honduras had presented a vivid slide show about continuing violent repression of protesters since the 2009 military coup against the government, along with images of a gleaming new port and a harrowing account of the primitive conditions undergirding that modernity. Honduras has no law to protect workers, no collective bargaining rights. Companies won't acknowledge the SGTM, won't negotiate, so workers fear joining the union, fear losing their jobs. There is some cooperation between permanent and temporary workers, between those who embrace the union and those who do not, but nothing official. There is no job security, no insurance or company responsibility for accidents, no compensation for death on the job, no regulation, no government record-keeping of accidents.

Listening to this as an outsider, and to other reports from poor countries – where each port may have three unions, or one in name only, or none at all; where natural disasters, like the near-biblical November 2008 flooding and mudslide in Itajai, Brazil, might wipe out work in an instant, with dockers returning months later to privatized facilities, their incomes gutted from $4,000 to less than $500 – it was difficult to fathom solidarity as more than a sympathy resolution or disaster relief package.

Knowing the situation among unions just in the U.S.A. – where the ILA's HQ in New York hungrily awaits the expansion of the Panama Canal in 2014 in hopes of stealing work from the International Longshore and Warehouse Union's (ILWU's) West Coast ports; where the ILWU milks its militant history when opportune but is increasingly undemocratic and politically backward, joining with maritime bosses in the name of "employer preference" and "efficiency" to steal work from Machinists in Seattle – it is easy to be pessimistic, easy to revert to an aloof leftism that regards unions as hopelessly compromised.

But the delegates to the IDC general assembly in Charleston have some experience exercising collective muscle, when their brothers and sisters halfway around the world are in need. They were meeting in Charleston because ten years ago their pressure, including direct job action, was crucial in reversing a corporate and state attack against dockworkers here who had protested the use of scab labor at the port, a campaign that reverberated in the slogan, "Free the Charleston Five." This year's meeting was not an occasion for self-congratulation or bluster about dramatic stands, though. An intervention in support of the Costa Rican workers would have to be coordinated, but the weight of problems facing all port workers was palpable in the room, and, on the whole, delegates did not seem to be deluded about the depth of these. The

"The problem is everyone has their small interests. They are afraid they will lose this boat, they will lose this work. But they will lose them anyway, so if we do nothing everyone dies alone."

IDC's general coordinator, Antolin Goya of Spain, repeatedly advised, "We must not lie to ourselves." And, in the breaks, dockers were plain about collective deficiencies, particularly in the midst of recession. Joao Alves, of Portugal's SETC, put it concisely: "The problem is everyone has their small interests. They are afraid they will lose this boat, they will lose this work. But they will lose them anyway, so if we do nothing everyone dies alone."

And that brings us back to "The Cargo Chain" and what is not just ahead for dockers in the industrialized world but already here. In Hamburg and in Rotterdam there are docks that operate with no visible human presence. Once a container is moved off a ship, it is picked up by an automated crane, which puts it on an automated guided vehicle, which transfers it to the yard, where two automatic rail-mounted gantry cranes, or ARMGs, stack and retrieve containers. Sensor technology creates a grid around the yard, and GPS systems keep track of where each container is. No need for crane operators, no need for clerks. Where, typically in the U.S.A., two operators, and sometimes a marine clerk, are assigned to each rubber-tired gantry crane that moves containers around the yard, here a single worker can oversee the independent functioning of many machines from a control tower. Maybe a clerk is on hand in the event of an error. Port truckers are given a code or a card that they insert in another machine, which gives the order to the ARMG to pick up the containers they have come for. The driver is signaled to a bay, where the machine puts the coded container on the truck. The truck and its cargo are checked at the gate with automatic character recognition, and cameras photograph the vehicle and its license plate. The closest U.S. equivalent is APM's new terminal in Norfolk, Virginia, where six yard cranes run by GPS, cameras and computers are operated at once by one worker in a computer booth.

This is a revolution in dock work at least as dramatic as containerization, which in the 1960s cut the gang unloading a ship from 125 longshoremen to 40, with phenomenal increases in speed. A number of U.S. and European terminals not yet fitted with full automation have already reduced worker hours by installing GPS and other technology to eliminate work formerly performed manually by clerks.

Ed DeNike, chief operating office of SSA, estimates that longshore wages and benefits on the West Coast cost a terminal on average $1,000 per longshoreman per day and announced SSA's plans to bring the technological revolution to one of its Long Beach piers, in an effort to jack up productivity and begin ridding itself of its human burden. "We, as employers, earned it," DeNike said, having negotiated large increases in worker benefits in exchange for the right to implement technology. So far, the ILWU's most substantive response to looming displacement has been that same negotiated agreement and the deal for its members to stick it to the Seattle Machinists, a deal recently upheld by the National Labor Relations Board.

A relatively small betrayal, it is nevertheless that impulse for short-term gain at the expense of class unity that is the crux of the workers' problem, rather than sheer corporate power. Capital has al-

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ways been powerful, but, in an economy dependent on global trade, its power cannot transcend the incontrovertible nature of interlocking labor. As important as productivity is to the shipping industry's fortunes, all the speed of automated ports is worthless if there are ruptures anywhere in the relay from factory to consumer. As "The Cargo Chain" outlines, in the U.S.A. that means smooth acquiescence not only from 60,000 longshore workers, but also from 28,000 tugboat operators and harbor pilots, 60,000 port truckers, 850,000 freight truckers, 165,000 railroad workers, 2 million warehouse and distribution workers, 370,000 express package delivery people, and 160,000 logistics planners – and from similarly interlocked clusters of workers all around the world. They are not all organized, but then they would not all have to say No: just enough of them, acting in concert, at vital points in the chain.

So, the question becomes, what is the workers' strategy? Historically, worker organization has followed the organization of capital. It took a long time for industrial unionism to develop, and there has been a long gestation period of solidarity trips and fraternal messages in the advance of global unionism. Dockworkers have been ahead of the curve by virtue of their position in the industry, and it is no exaggeration to say that they and their counterparts in the transport sector are the only workers (other than computer hackers and Wall Street traders) who pose a threat to global capital, and the only ones whose global organization has the potential to shift the balance of power in the interests of the people.

"We are authorized to resist; we are not authorized to fail," Joao Alves said toward the conclusion of the IDC conclave. The route to success may be foggy, but the route to failure is clear. If competition, tunnel vision and disunity are problems, they are also ones that workers can solve. Some of them have to replace their union leadership. Most of them, in this country anyway, have to deepen their political education. "It was only when we [dockworkers] defeated the small notion of our competition in Europe that we defeated the Ports Package," which would have deregulated work in EU ports and crippled dockers' unions a few years ago, Frank Leys of the ITF pointed out to me.

His presence in Charleston was meaningful, for the most significant development at the IDC general assembly was the delegates' decision to authorize its leadership to begin negotiations to develop an alliance with the ITF, which is a federation of all transport unions. Without belaboring the details, the IDC was formed in 2000 in response to the failure of the bureaucrat-heavy ITF to defend militant dockers. With the IDC, as one U.S. delegate said in Charleston, "the whole hand belongs to dockworkers," whether or not their top leadership goes along (which is why ILA locals at odds with their hidebound International officials can participate). But ten years have passed, during which both organizations have developed, and while there are political differences, the dockers affiliated with each understand that division equals death.

Inside APM's new terminal in Norfolk, Virginia, six yard cranes run by GPS, cameras and computers are operated at once by one worker in a computer booth.

A couple of years ago, the great historian of the Mexican Revolution, Adolfo Gilly, said with respect to the eruption of resistance to the neoliberal agenda in Latin America, "This is not a time for hope; this is a time for rage. People want to live and they cannot live." Dockworkers, like the class as a whole, are finding it hard to live, or finding it hard to imagine how they can live, down the road, if they do not act. They – and not only they, we – need a plan; we also need maps and a band of warriors in the right places because, as they also say in Latin America, "the struggle is real."

CP

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country," gave the East India Company extraordinary powers. It was a private corporation acting as the "chosen instrument" of the Crown. Others may investigate which of these powers coopted the other, but they were a strong combination. The Company's powers included the governance of India, supported by the royal military; and a monopoly of tea export, enforced by the British Navy. Americans' early experience with this monopoly corporation was hostile: we were its angry exploited customer. Its monopoly power, coupled with Lord North's excise tax on tea, led, of course, to the "Boston Tea Party," an event that modern "tea-baggers" seriously misinterpret as they flourish it as a symbol to use against all taxes. While they are at it, they may unthinkingly back politicians who support corporate monopolies. And yet, "It was the danger of this (tea) monopoly rather than the tax itself, only 5 pence to the pound, that aroused resentment in the colonies" (Henry Steele Commager, *The Spirit of Seventy-Six*).

Some of the original 13 colonies were founded by chartered companies resembling corporations, with powers to grant land. A goal of the American Revolution was to strip these original governments of their corporate powers and redistribute lands they had granted to their favorites. Descendants of these dispossessed Loyalists and Tories, many living in Canada, occasionally still remind us that we should compensate them as a matter of "honor." Data are vague, and historians coy on the matter, but something like a third of all early colonial land titles changed hands in this period. Hostility ran unusually high: in later wars, the winning Americans have rarely confiscated the lands of the losers – unless they were Indians, and not always then. If the Dutch-granted "patroon" spreads in the Hudson Valley survived, there were special reasons: British troops dominated the lower Valley; Holland became our ally and financial angel during the war; and Robert Livingston, a major landholder, was an influential Revolutionist himself. It was not the national government that confiscated Tory lands but independent local militia seizing the opportunity. Our "Minute Men" were the guerillas then. "The Revolution was in the hearts and minds of men" – John Adams. The British controlled many major cities, but militia controlled the countryside, and

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made the most of it.

The girls in Boston are dancin' tonight; / the gol-durned redcoats are holdin' 'em tight / When we git there we'll show them how, but that ain't a-doin' us no good now.

What did "do them good" and motivate the militia was seizing lands from Tories.

After the Revolution, naturally, Americans were not eager to restore the authority of colonial corporations. A common attitude in this era was that corporations are not persons because "they have neither souls to be damned nor bodies to be kicked": they are outside and above social sanctions, sacred or profane. Corporations are "soulless," and their directors' only social responsibility is to the shareholders (or, as it often turns out, to themselves and their top brass).

The U.S. Constitution did not mention corporations, pro or con, and left them to be chartered by the states, as they still are. It has been the U.S. Supreme Court, using its power of judicial review, that gradually built up corporate power (even though the Fifth Amendment limits federal, not state powers). The Constitution does not mention judicial review either – it is a power that the Court under Chief Justice John Marshall gradually assumed from an early date and has made into a tradition, step by step. A leading case is *Marbury v. Madison*, 1803. Marshall was a Federalist politician and a disciple of Alexander Hamilton, whose chief concern was upholding "property," including property in land and slaves. He had been secretary of state under President John Adams who, as a lame duck, appointed him as chief justice in order to offset the victory of Thomas Jefferson and his popular party – not that Jefferson in power was as radical as the ringing words he wrote. Marshall was wily and took power effectively over a long tenure, 1801-35. His was the original "Activist Court" that propertied people have supported until it briefly became a pejorative to be used against the Warren Court.

The next milestone was the decision in *Trustees of Dartmouth College v. Woodward*, 1819. The governor of New Hampshire, William Plumer, and his legislature sought to take control of Dartmouth College to turn it from an elite private institution into a public university for a wider student body. Dartmouth had been founded by Eleazar Wheelock in 1769 under a corporate Charter from King George III – not a popular name in America. The original purpose was to "save" the Indians and instruct them in European ways like drinking rum and privatizing lands.

Governor Plumer believed that the Revolution had transferred sovereignty from the king to American legislatures, so he might take control by appointing new trustees.

Daniel Webster, representing the trustees, prevailed upon John Marshall to validate King George's charter on the grounds that a privilege, once given, was

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a contract in perpetuity and could not be withdrawn – lawyers may cavil over the wording. The effect on academic freedom was to subject faculty members completely to the will of self-perpetuating boards of trustees, a matter covered in this writer's *The Corruption of Economics.* The effect on privileges was to give them *sanctity* (a theological concept), however they originated and whatever damage they do to society at large. Before that, the grant of a corporate charter was seen as a *privilege*, not a right; it was a license, not property – something more like your drivers' license, or a license to sell liquor or cut hair. It was subject to conditions, and revocable without compensation. After *Dartmouth* it had the best of both worlds: it was still not taxable as property, but otherwise protected under the Fifth and later 14th Amendments.

The next milestone was in 1832, when Andrew Jackson defied the High Court in *Worcester v. Georgia*. Jackson was morally wrong, by modern values: he and the state of Georgia aimed to force the Cherokees from their ancient homeland. (Marshall was probably more concerned with the principle of upholding ancient land tenures than with helping the Cherokee people.) The point for us here is that Jackson prevailed, after various face-saving moves, demonstrating that a strong, assertive president can face down a chief justice when he thinks the stakes are high enough. This is relevant today, when *Citizens United* has suddenly raised the stakes high enough indeed.

The next legal milestone was the *Dred Scott* decision by Roger Taney's Court, 1857. *Dred Scott* demonstrated two things we should note today. One is the tendency of the Court, left to its own devices, to uphold "property rights" of whatever kind, even in human flesh, in disregard of human rights like personal freedom. The other is the tendency of Americans to react against the Court when it overreaches.

The reaction to *Dred Scott* produced, besides a terrible war, *The Emancipation Proclamation* in 1863. This was an extra-legal act that Lincoln felt strong enough to perform after Union troops blocked Lee's invasion at Antietam, and no slave-owner felt strong enough to challenge as invading the "sanctity of property," and no Court strong enough to review. Following the war came the Radical Republican Congress that pushed Reconstruction in the South, and the 13th, 14th and 15th Amendments establishing the freedmen as citizens with full rights. These were radical acts under radical leaders like Thaddeus Stevens, leading toward considerable taxation of real estate in the South, temporarily.

Next came the Grant administration, 1869-77, filled with bribery scandals and giveaways of public lands to private corporations, mainly to build railways. The Desert Land Act of 1876 also rationalized a giveaway of vast lands plus the Kern River – supposedly, to promote irrigation. Mark Twain and Charles Dudley Warner labeled it "The Gilded Age" (the first one), and "The Great Barbecue." These scandals were on a greater scale than anything the states had done in the earlier Canal Boom. Greed in corporate forms rushed in to exploit the sacrifices of countless soldiers in the bloodiest war in U.S. history.

In 1871, an obscure San Francisco journalist Henry George published *Our Land and Land Policy*, with a map showing the extent of the railroad land grants,

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painting them as broad swaths making up a large fraction of the West. He somewhat exaggerated their extent because these solid ribbons were actually checkerboarded, but he made his point. Historians like Paul Gates now credit him with being first to sound the alarm, slowly resulting in various political reactions like the Populist, Progressive, and Single Tax movements.

Meantime, propertied Northerners recaptured the Republican Party and joined forces with propertied Southerners to install Rutherford Hayes as president in the disputed election of 1876. Thus ended Reconstruction and Radical Republicanism.

In 1873 came a great crash, starting a 10-year depression that slowly turned minds, again, against corporations and the enormous land grants that the "robber barons" controlled. These bided their time until recovery and complacency let our High Court rule in *Santa Clara County v. The Southern Pacific Railroad*, 1886, that the corporation was a "legal person" within the meaning of the 14th Amendment. The Court hijacked the Amendment, passed to protect the rights and properties of former slaves, to protect corporations.

Santa Clara began a legal process of endowing all corporations with personhood, so no state can deprive them of life, liberty OR PROPERTY, Amen. The tenures deriving from the notorious bribery scandals of the Grant years are now above the reach of any state. They are endowed with "sanctity": you offend God Almighty even to question them! That was quite a coup.

To be sure, the change was not that sudden. The law evolves incrementally. As late as the 1970s, Justices Rehnquist and White could say that a corporation is just "a creature (creation) of the law," without all the civil rights of natural persons. The ideas, finally crystallized in the *Citizens United* decision of 2010, have been bruited about tendentiously for a long time in influential circles, without becoming law. The new decision, however, draws a clear new line in the sand and will not be ignored.

The reaction to the *Santa Clara* kind of judicial activism was voter receptivity to another wave of reform. History books dwell on changes at the federal level during the Age of Reform, led by the Populist and Progressive movements; but the unsung part of reform was that states and cities and counties and school districts struck back at land barons by raising state and local property taxes to finance public schools and public works of many kinds. The decades 1880 through to 1920 formed the golden age of urbanization in the U.S.A., and growing cities taxed property to provide schools to make people literate and furnish services such as sanitation and water supply to make urban life possible.

At the federal level, many dissidents joined to form the Populist Party, winning one million votes and 22 electoral votes for their little-known presidential candidate James Weaver. In the 1894 elections, they polled even 50 per cent more votes. They elected six senators and several congressmen and enough influence to pass a desired progressive personal income tax that included a tax on property income. In 1896, they merged with the Democrats, cast out old leaders like Cleveland, and went with Bryan and his brain, John Peter Altgeld. Republicans, trolling for their votes, became Progressives themselves under T.R. and Wm. H. Taft, followed by Progressive Democrat Wilson, so, for two decades we had two Progressive Parties. Many Progressive Republicans and their ideas even survived the postwar reaction against Wilson. Few have called Andrew Mellon, powerful treasury secretary who virtually ruled Presidents Harding, Coolidge and Hoover, a Progressive, and yet he wrote in 1924 that we should tax property-derived income higher than wage income (*Taxation: the People's Business*).

The Court hijacked the 14th Amendment, passed to protect the rights and properties of former slaves, to protect corporations.

Of course, in 1894 our High Court had overturned the Populist personal income tax on the grounds that it included a tax on real estate income, which they construed as a "direct" tax (*Pollock v. Farmers' Loan and Trust Co.*). The U.S. Constitution reads that a "direct" tax must be apportioned among the states according to population, which the 1894 tax was not. This setback, however, only led, first of all, to the corporate income tax of 1907, a major blow to corporations, and then, in 1913, to the 16th Amendment and the personal income tax. In 1916, the first substantial income tax bill under the amendment exempted most wage and salary income, making this more a tax on property income fthan envisioned in the Act that the 1894 court had disallowed.

In 1912, Hiram Johnson won as governor of California, defying and breaking some of the power of the Southern Pacific Railway Corporation. As part of this movement before and after Johnson, the California legislature enabled the growth of Irrigation Districts with strong powers to tax lands to pay for remarkable systems of water supply, under which California quickly vaulted into our leading farm state. It was a striking object lesson in how radical Progressive policies of the right kind can attract industry, people and capital. The U.S. High Court had laid the foundation for this in its validation of District powers in *Fallbrook I.D. v. Bradley,* 1896.

Single-taxers were active and visible in the Progressive Movement. Henry George Jr. published *The Menace of Privilege* in 1905. He included the corporate form among the four most threatening privileges. Several cities had single-tax mayors, as documented in this writer's *New Life in Old Cities*. Chicago and Milwaukee seized back their waterfront lands from railroad corporations to make their beautiful parks. Single-tax Congressmen Henry George Jr. and Warren Worth Bailey worked with Claude Kitchin and a socialist or two to frame the income tax act of 1916 that virtually exempted wage and salary income.

By 1917, the old Populists could say they had achieved most of their goals through other parties. The postwar reaction of 1920, however, was all the Court needed to rule in *Eisner v. Macomber*, 1920, that the IRS could not tax unrealized capital gains without another act of Congress – an act that Congress never provided. This has provided a major loophole ever since, both for corporations and their shareholders.

The year 1937 saw the next milestone when President FDR, at the height of his electoral strength, tired of having the High Court reject his programs. He copied Lloyd-George's 1909 success against the House of Lords. He didn't

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just threaten to "pack" the Court by adding new justices, he played hardball with the Reorganization of Judiciary Act. This did not go down easily and a major battle loomed, when Justice Owen Roberts, who had been joining in 5-4 majorities against the president, prudently changed sides in a minimum wage case. It's been called "The switch in time that saved nine."

All along, though, an accumulation of small actions was helping corporations at the expense of labor. The Warren Court, 1953-69, did many notable deeds for the common man and woman, but it did not stop the decremental fall of the share of corporate income tax revenues in federal finance. The milestone year was 1968, when the payroll tax quietly surpassed the corporate tax as the second biggest source of federal revenue. Just think – the corporate income tax of 1907 antedated the payroll tax of 1935 by 28 years, and it was another 33 years, 1935-68, before the payroll tax took in more money than the corporate tax did. That was a revolution, indeed, but so quiet and gradual that most people never noticed. Nor was that the end of it: by 2008, the corporate tax raised just 11 per cent of federal revenues, compared with 38 per cent for the payroll tax, nearly four times as much. That is a measure of the growing power of corporations in politics.

On top of that, *personal* income taxes on corporate dividends and capital gains have been singled out for preferentially low rates. In 2003, President Bush and his Congress lowered the tax rate on both dividends and capital gains to 15 per cent, so that a smaller share of the personal income tax now comes from corporate shareholders. As late as in the Tax Reform Act of 1986, dividends were taxed like other "ordinary" income. So, briefly, were capital gains. President George H.W. Bush then devoted most of his presidency, and sacrificed a second term, to get a token cut in the capital gains rate. It was the thin end of a wedge, leading soon to the present cap of 15 per cent. Capital gains, so-called by Congress, derive from many sources, but one of the biggest is sales of corporate stock.

And so things stood until January 21, 2010, when the High Court authorized corporate leaders to contribute unlimited amounts of their shareholders' cash to political causes. This poses a challenge to our tabloid- and TV-numbed generation. Will "ordinary" taxpayers rebel, as they did in the American Revolution, Emancipation, the Progressive Age of Reform, and the New Deal, or will corporate power wax unchecked until it replaces democracy altogether? Cyclical theory says we will have another anti-corporate reaction, but history also records tipping points in the decline of nations, from which they do not recover for generations, if ever. This one may be a squeaker.

Here is a summary from that brief history of the problems with treating corporations as "legal persons."

1. Corporations never die, never pay estate taxes, never divide their wealth among succeeding generations. In this, they resemble medieval Churches that agglomerated over many years so much land that they threatened the state itself – often resulting in massive confiscations, as by Henry VIII.

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2. Besides not dying, corporations merge with or otherwise acquire other corporations, progressing, if unchecked, from competition to cartel to oligopoly to monopoly.

3. A corporation is by nature a combination in restraint of trade – that is, a union of many individuals with their wealth to act as a unit, dealing with customers, suppliers, and workers. It took Thorstein Veblen, a thinking man, to bring out this fact which should be obvious. The courts, historically, have borne down on labor unions as illegal combinations while, as a matter of course, treating this combination of lands and capitals as an individual.

4. Corporations enjoy the legal privilege of limited liability.

5. The ownership of corporations is or may be made secret. Many stocks are recorded in "street names" – a favorite being "Cede and Co." No citizenship is required for a corporation to sway American government more than almost any citizen.

6. No person is easily held responsible for corporate acts. The first duty of CEOs is to the shareholders, so they say, to dodge guilt for any outrage against others. Most shareholders, in turn, have little idea what their CEOs are doing.

7. The internal governance of most corporations is intensely undemocratic.

8. The corporation cannot be jailed, and its officers seldom are, as they have great opportunities to pass the buck.

9. The corporation has no spiritual counselor or confessor to prick its conscience.

10. Before January 21, 2010, the attitude, as expressed by Justices White and Rehnquist in the 1970s, has been that corporations are "creatures of the law," not equal to natural persons in their civil rights. Suddenly, to reverse this now is to upset many expectations that relied on the previous rule.

Finally, what can we do about the High Court's marriage to corporate power? I first list what I consider ineffective remedies, and then those that can

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Ineffective remedies

a. Justices may be impeached. This has succeeded only once, to my knowledge, in 1804, when a justice was obviously insane.

b. Within a state a justice may be recalled, as Rose Bird was. There is no such provision for federal judges.

c. A president can appoint anti-corporate judges as vacancies occur. This will happen at best over a long-time span, but it needs to happen fast because, with their newfound pecuniary "free speech," corporations will soon control both Congress and the Executive even more than they do now.

d. Congress can tighten restrictions on foreign corporations contributing through American subsidiaries. This is better than nothing but does not affect American-chartered corporations, whoever actually owns them.

e. Congress might ban political advertising by any noncitizen, including any group that includes a noncitizen. This would entail forcing corporations to identify their shareholders. This proposal may entail too many steps to be implemented quickly, if at all. As a layperson, I would refer that point to learned counsel.

Effective remedies

a. The Executive and the Congress can play hardball by drafting new legislation to curb corporate contributions and threatening covertly to raise the corporate income tax as a bargaining chip – a big chip! This calls for a leader who sees the imminent danger and is willing and able to act firmly and decisively, and communicate credible threats covertly without breaking any rules, *a la* FDR. Washingtonians are skilled and experienced in this sort of thing.

b. The Executive can introduce legislation, modeled on the 1937 Reorganization of Judiciary Act. This act would have given the president power to appoint six new justices. It was a credible threat that worked by turning FDR's 4-5 minority into a 5-4 majority, in spite of a great outcry against it. It is what we need today. It is radical, yes; but the Court's ruling is radical, and calls for a remedy equally strong or stronger.

c. Could a simple act of Congress declare that a corporation is not a legal person? Perhaps so, perhaps no – we need learned counsel to tell the odds. However, a straight line is the shortest distance between two points, and this action would bring the issue quickly to a head.

In summary, we have seen that the United States was born in rebellion against corporations. The U.S. Supreme Court soon began restoring their power. When it overreached, strong executives and popular movements set it back: under Andrew Jackson, Abraham Lincoln, Teddy Roosevelt, and FDR. Today it has overreached again; it remains to see if a new movement or leader will arise to set it back again.

CP

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